

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SAMARITAN MINISTRIES INTERNATIONAL
and ten of its New Mexico members, namely,
ZACHARY & RACHEL CORDEL, DAVID
ALLAN & MONETTE BELL, REV. ANDREW &
HEATHER HEATH, JAY & AMY O'NEILL, and
REV. NATHAN & REBEKAH BIENHOFF,

Plaintiffs,

v.

ALICE T. KANE, in her personal capacity and in her
official capacity as the Superintendent of Insurance
for New Mexico,

Defendant.

**Case No. 1:23-cv-01091-MIS-
SCY**

Jury Trial Requested

**PLAINTIFFS'
UNOPPOSED
REQUEST FOR LEAVE
TO FILE SUR-REPLY
TO DEFENDANT'S
MOTION TO STRIKE
THEIR AMENDED
COMPLAINT**

Yesterday, Defendant filed a Reply ("Reply"; ECF No. 37) to Plaintiffs' Opposition ("Opp."; ECF No. 36) to her Motion to Strike ("MTS"; ECF No. 34) the First Amended Complaint ("FAC"; ECF No. 32), and Plaintiffs responded with this request (ECF No. 38), which the Court denied for failure to indicate whether Defendant opposed the request (ECF No. 39). With apologies for the oversight, the undersigned now has conferred with Defendant's counsel, who does not oppose this request. If the MTS otherwise might be granted, Plaintiffs respectfully request leave to file a six-page Sur-Reply, which would argue with cited authority the following six points:

1. Defendant cites the "short and plain" requirement of F.R.Civ.P. 8(a)(2) five times without ever recognizing its express application to "claims" and not entire complaints. Opp. at §II.D.2. Defendant has made no effort to challenge any "claim" on this ground.
2. Defendant says the FAC "is littered with immaterial and impertinent" material. Reply at 3. Since her sole (first) example of such "litter"—53 paragraphs of the FAC on the particulars of Samaritan's ministry (MTS at 4)—was easily refuted (Opp. at 5-6),

Defendant now adds one new example: the “four years of complex litigation” involving OSI’s “enforcement actions against” the other five ministries (Reply at 3-4).

- a. This new (second) example of “litter” could and should have been raised in the MTS and should be stricken from or ignored in the Reply.
 - b. This second example is as misguided as the first. Allegations of OSI’s litigation against the other five ministries establish key elements *here*—e.g., (i) credible threat/preenforcement standing, (ii) ripeness, and (iii) targeting of a religious sector—all of which Defendant has opposed. *See* ECF Nos. 4, 18, & 20. The FAC makes those vital allegations rationally and judiciously. To have done otherwise would have exposed the FAC and key claims to Rule 12(b) dismissal.
3. Defendant claims the FAC is (a) “lengthy, vague, confusing, and indiscernible,” (b) “lengthy and convoluted,” and (c) “so confused, ambiguous, vague, or otherwise unintelligible that its true substance, if any, is well disguised.” Reply at 6-9. Except for length, these criteria have no place here. While lengthy, the FAC is anything but vague, confusing, indiscernible, convoluted, ambiguous, unintelligible, or disguised.
 4. Defendant is in no position to argue prejudice or undue burden since she did not complain about the 350% longer original complaint and its 466% more total pages.
 5. Defendant failed to establish any of the five *Ehrenhaus* factors for dismissal, much less all or even a preponderance of them. Pls. Opp. at 7-8; Defs. Reply at 6-8.
 6. At bottom, it appears Defendant is belatedly and opportunistically seeking to procure a weaker complaint, more susceptible to her coming Rule 12(b) Motion to Dismiss.

Dated this 6th day of August, 2024.

Respectfully submitted,

GAMMON & GRANGE, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2024, a true and correct copy of the foregoing Plaintiffs' Unopposed Request For Leave to File Sur-Reply to Defendant's Motion to Strike Their Amended Complaint was filed with the Court and served upon the parties via the CM/ECF system.

/s/ J. Matthew Szymanski

J. Matthew Szymanski